

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reissue Application)	MAIL STOP REISSUE
of U.S. Patent No. 5,714,460	:	
)	Examiner: Not yet assigned
Peter GLUCKMAN et al.	:	
)	Group Art Unit: Not yet assigned
Application No.: Not yet assigned	:	
)	Confirmation No.: Not yet assigned
Filed: Herewith	:	
)	
For: IGF-1 TO IMPROVE NEURAL	:	
OUTCOME)	

NOTICE UNDER 37 C.F.R. §1.178(b)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The undersigned for the above-identified application, pursuant to
37 C.F.R. § 1.178(b), hereby call to the attention of the Office the facts outlined below:

1. The present patent, as well as a second patent to the present inventors, namely 5,861,373, was involved in Interference 104,553 against two applications to Lewis et al., namely U.S. Application Serial Nos. 09/064,159 and 09/318,001.
2. A final judgment dated April 28, 2003 in Interference 104,553 entered judgment that Gluckman et al. was not entitled to a patent containing Claims 1-15 of U.S. Patent No. 5,714,460 or to a patent containing Claim 1 of U.S. Patent No. 5,861,373.
3. Footnote 17 of the Decision in Interference 104,553 dated March 25, 2003, stated the following:

The interference rules do not provide for a movant under 37 C.F.R. § 1.633(b) to amend its claims to avoid an interference because the agency would be unable to determine with finality whether the non-movant is entitled priority. Cf. 37 C.F.R. § 1.662(b) (treating the filing of a reissue application without corresponding claims as a concession of priority). Since Gluckman cannot so move, if Gluckman were to lose on priority, it would not be estopped (37 C.F.R. § 1.658(c)) from filing a reissue application seeking narrower claims that would not have been obvious in view of the subject matter of the lost count to the extent Gluckman's specification supports such claims. E.g., In re Johnson, 558 F.2d 1008, 1018, 194 USPQ 187, 196 (CCPA 1977) (Claims amended in continuing application to exclude subject matter of lost count).

In the event that there are any questions relating to this Notice, or the reissue application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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